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1771

PATENT APP. NO. 10/046,279
ATTY. DKT. NO. 53394.000550

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Troy DELZER *et al.*) Examiner: Lynda Salvatore
Serial No.: 10/046,279) Group Art No.: 1771
Filed: January 16, 2002)

For: SYSTEM AND METHOD FOR DRY FORMING ABSORBENT CORES

RESPONSE TO SECOND ELECTION/RESTRICTION REQUIREMENT

Provisional Election

In response to the second Restriction Requirement mailed January 27, 2004 ("the Restriction"), Applicants hereby provisionally elect, with traverse, the invention of Group I, claims 1-48.

Traverse

The Restriction with regard to Groups I and III is traversed for the following reasons, and reconsideration and prosecution of the claims of Group I and claims 59 and 60 of Group III is respectfully requested.

Groups I (claims 1-48) and claims 59 and 60 of Group III are related as an apparatus for making a product and the product made.¹ According to M.P.E.P. § 806.05(g) restriction of such related claims is proper only when "either or both of the following can be shown: (A) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus as claimed can be used to make other and

¹ Note that Claim 61 incorrectly refers to the "method of claim 45," (which is actually an apparatus claim) when it should refer to the "method of claim 49." As such, the discussion herein is made in reference only to claims 59 and 60.

different products; or (B) that the product as claimed can be made by another and materially different apparatus." In support of the restriction, the Examiner alleges that "the absorbent core of the absorbent garment [presumably of Group III] can be made by powder coating or sprinkling the particulate matter on the fibrous material and further laminating said fibrous material to self-sustaining top and back sheets." Therefore, the presumed basis for this restriction is that the product as claimed allegedly can be made by another and materially different apparatus.

The Applicants respectfully traverse this restriction. The relevant claims of Group III (claims 59 and 60) recite that "the particulate matter is distributed in the fibrous material *using the apparatus of claim 1.*" As such, the Examiner's allegation that the particulate matter can be distributed "by hand" or "powder coated" is rebutted because claims 59 and 60 of Group III *specifically recite* distribution of the particulate matter by the apparatus of claim 1.

In light of the specific recitation of the use of the apparatus of claim 1 to distribute the particulate matter, Applicants believe that the example provided in the Restriction is shown to be unworkable, at least with respect to claims 59 and 60, and reconsideration and withdrawal of the restriction with regard to these claims is respectfully requested.

Conclusion

Should any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,
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February 26, 2004